

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA07-1102

ERIC STILES,

APPELLANT

V.

LONG AGO ANTIQUES and ONE
BEACON INSURANCE,

APPELLEES

Opinion Delivered FEBRUARY 4, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F602222]

AFFIRMED

KAREN R. BAKER, Judge

Eric Stiles appeals pro se from a decision of the Workers' Compensation Commission, affirming the Administrative Law Judge (ALJ) and finding that claimant failed to prove by a preponderance of the evidence that he suffered a compensable injury to his back on November 23, 1999.¹ In this appeal, claimant raises the following six points for reversal: (1) that the Commission erred in finding that claimant did not prove a compensable injury; (2) that the Commission erred in denying claimant necessary medical services; (3) that the respondent changed the reason for denying benefits from the statute of limitations to no compensable injury; (4) that there was no new pre-trial hearing scheduled when respondent withdrew its stipulation of compensability; (5) that the Commission should have granted his

¹In an unpublished opinion handed down April 9, 2008, this court ordered rebriefing when it was unable to determine if Mr. Stiles was a pro se litigant or if he was being represented by a non-attorney. *See Stiles v. Long Ago Antiques*, CA07-1102 (Ark. App. Apr. 9, 2008).

request for submission of additional medical records; and (6) that estoppel and laches should have been invoked to prevent appellee from making allegations seven years after accepting compensability. After a review of the record, we affirm the Commission's decision.

The claimant in this case worked for Long Ago Antiques as an antique furniture refinisher. Claimant testified that on November 23, 1999, he suffered a compensable injury to his back while lifting a desk into a "strip tank." He stated that when he lifted the desk, "[he] felt something – knew something was wrong right when [he] did it." After the incident, claimant saw Dr. Hart, his family physician. Claimant testified that as a result of the injury he was unable to work for six to seven weeks. Claimant was not covered by workers' compensation insurance due to a misunderstanding between his employer (a business owned by his parents) and One Beacon Insurance about whether claimant should have been covered as a relative of his employer. Claimant testified that once One Beacon informed his employer that he should have been covered, One Beacon paid back premiums on claimant. He also testified that his injury was accepted by One Beacon as compensable, and from that point on, One Beacon reimbursed him for his past medical expenses and also provided him benefits for his current medical treatment.

Approximately four months after his injury, claimant was referred to Dr. Runnels, who performed an MRI. The MRI showed that claimant's lumbar spine was "within normal limits." Claimant then received a second opinion from Dr. Mitchell. Dr. Mitchell's opinion mirrored that of Dr. Runnels. Throughout this time period, Dr. Hart continued to prescribe claimant medication. Dr. Hart also referred claimant to Dr. Blankenship. Dr. Blankenship

prescribed a series of epidural steroid injections for claimant. At claimant's last visit, Dr. Blankenship told claimant to continue the injections only once a year. In July 2002, a second MRI was performed on claimant, which showed straightening of the normal lumbar lordosis and minor degenerative changes. In October 2005, claimant requested z-joint injections. This medical treatment was denied by One Beacon as being outside the proscribed time frame in the statute of limitations. Because of the denial of additional medical treatment, claimant requested a hearing on the issue. At the hearing, One Beacon informed the claimant and the Commission that it was challenging the compensability of the injury, alleging that there were no objective medical findings to prove that claimant sustained a compensable injury.

The ALJ found that claimant failed to prove a compensable injury, as claimant failed to present any objective medical findings to meet his burden of proof on compensability. The opinion was based on the March 22, 2000 MRI of the lumbar spine, which revealed normal findings. The MRI report stated that the "MRI of the lumbar spine was within normal limits." The report also showed minor dehydration of the L5-S1 disc but height was well-maintained; "no disc herniation, annular tear or neural exit foraminal narrowing;" and "no disc herniation or spinal stenosis." The ALJ noted that while the 2002 MRI, performed almost three years after the injury, showed degenerative changes, these changes were not noted on the 2000 MRI. On appeal, the Commission summarily affirmed the opinion of the ALJ.

Claimant filed a motion seeking to introduce additional medical records from Dr. Hart. One Beacon objected to the introduction of this evidence. The Commission denied

claimant's motion finding that he was not diligent in seeking to introduce this evidence which was clearly available to him at the time of the hearing on compensability. This appeal followed.

When reviewing a decision of the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission and affirm that decision if it is supported by substantial evidence. *Liaromatis v. Baxter County Reg'l Hosp.*, 95 Ark. App. 296, 236 S.W.3d 524 (2006) (citing *Clark v. Peabody Testing Serv.*, 265 Ark. 489, 579 S.W.2d 360 (1979); *Crossett Sch. Dist. v. Gourley*, 50 Ark. App. 1, 899 S.W.2d 482 (1995)). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Wright v. ABC Air, Inc.*, 44 Ark. App. 5, 864 S.W.2d 871 (1993). The issue is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; even if a preponderance of the evidence might indicate a contrary result, if reasonable minds could reach the Commission's conclusion, we must affirm its decision. *St. Vincent Infirmary Med. Ctr. v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996).

The Commission is required to weigh the evidence impartially without giving the benefit of the doubt to any party. *Keller v. L.A. Darling Fixtures*, 40 Ark. App. 94, 845 S.W.2d 15 (1992). Normally, we only review the findings of the Commission and not those of the ALJ. *Logan County v. McDonald*, 90 Ark. App. 409, 206 S.W.3d 258 (2005). However, when the Commission adopts the conclusions of the ALJ, as it is authorized to do, we consider both the decision of the Commission and the decision of the ALJ. *Death & Permanent Total*

Disability Trust Fund v. Branum, 82 Ark. App. 338, 107 S.W.3d 876 (2003).

We consider claimant's first and second points together, as one argument pertains to the other. Claimant asserts that the Commission erred in finding that he did not prove a compensable injury and that the Commission erred in denying claimant necessary medical services. To receive workers' compensation benefits, a claimant must establish (1) that the injury arose out of and in the course of the employment, (2) that the injury caused internal or external harm to the body that required medical services, (3) that there is medical evidence supported by objective findings establishing the injury, and (4) that the injury was caused by a specific incident and identifiable by the time and place of the occurrence. Ark. Code Ann. § 11-9-102(4) (Supp.2007). As the claimant, appellant bears the burden of proving a compensable injury by a preponderance of the credible evidence. *See* Ark. Code Ann. § 11-9-102(4)(E)(i) (Supp.2007). Compensation must be denied if the claimant fails to prove any one of these requirements by a preponderance of the evidence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). Questions concerning the credibility of witnesses and the weight to be given their testimony are within the exclusive province of the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001).

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Supp. 2007); *Crawford v. Single Source Transp. Fidelity & Cas. Ins. Co.*, 87 Ark. App. 216, 189 S.W.3d 507 (2004). Objective findings are those findings which cannot come under the voluntary control of the patient, *Crawford, supra*, and are only necessary to establish the existence and extent of an injury, *Wal-Mart Stores, Inc.*

v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). It was claimant's burden to prove that he suffered a compensable injury on November 23, 1999. This burden necessarily required that he present objective medical findings establishing an injury. *Liaromatis v. Baxter County Regional Hosp., Supra*. Claimant failed to do so.

In this case, the medical evidence before the Commission, which was closest in time to the injury, was the March 2000 MRI. This MRI, while showing minor dehydration of L5-S1, was within normal limits. The 2000 MRI report further revealed the following: lumbar vertebral bodies showing normal alignment and no pathologic signal intensities; disc spaces were "well maintained and there [was] no disc herniation or spinal stenosis;" and no evidence of "disc herniation, annular tear or neural exit foraminal narrowing." The ALJ stated, "In short, the MRI scan which is an objective test revealed no objective findings establishing an injury." The ALJ took into consideration that a second MRI scan on July 23, 2002 revealed straightening of the normal lumbar lordosis and degenerative changes. However, it was performed almost three years after the incident and when compared to the 2000 MRI scan, the lumbar lordosis finding was not present on the 2000 MRI scan report, which was performed only a few months after the incident. While the ALJ found claimant's testimony of back pain to be credible, the ALJ found that his testimony alone, without any objective medical evidence, was not sufficient to establish a compensable injury.

The medical evidence in this case established that only a few months after the incident, claimant's lumbar spine was within normal limits. Therefore, substantial evidence supports the Commission's decision that claimant failed to prove that he sustained compensable injury.

Furthermore, because claimant failed to prove a compensable injury, there is no requirement to provide for additional medical treatment. *See White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001) (stating that an employer is only required to provide medical services that are reasonably necessary in treatment of the *compensable injury*) (emphasis added).

In claimant's third and fourth arguments, he asserts that respondent changed the reason for denying benefits from the statute of limitations to no compensable injury and that there was no new pre-trial hearing scheduled when respondent withdrew its stipulation of compensability. This court has said that pro se appellants are held to the same standard as those represented by counsel. *See Moon v. Holloway*, 353 Ark. 520, 110 S.W.3d 250 (2003). The pro se appellant should be aware before he elects to proceed that pro se appellants receive no special consideration of their argument and are held to the same standard as a licensed attorney. *Wade v. State*, 288 Ark. 94, 702 S.W.2d 28 (1986). Here, claimant chose to represent himself. When One Beacon withdrew the stipulation, claimant made no objection, no request for a second pre-hearing conference, nor motion for a continuance. Instead, claimant proceeded with the hearing on the scheduled date. Generally, a stipulation is an agreement between attorneys respecting the conduct of the legal proceedings. *Dinwiddie v. Syler*, 230 Ark. 405, 323 S.W.2d 548 (1959). The Commission, however, has the discretion to allow a party to withdraw a stipulation. In *Jackson v. Circle T Express*, 49 Ark. App. 94, 896 S.W.2d 602 (1995), this court held that the Commission's decision to allow the employer to withdraw the stipulation as to compensability in defense of the claim for additional benefits was consistent with its statutory duty under Ark. Code Ann. § 11-9-705(a)(1) to conduct the

hearing in a manner that would best ascertain the rights of the parties. Here, in light of claimant's failure to object, request a second pre-hearing conference, or move for a continuance, we find no abuse of the Commission's discretion in allowing One Beacon to withdraw its stipulation as to compensability.

Claimant also asserts as his fifth point on appeal that the Commission should have granted his request for submission of additional medical records. Arkansas Code Annotated section 11-9-705(c)(1)(A) (Supp. 2007) states that "[a]ll oral evidence or documentary evidence shall be presented to the designated representative of the commission at the initial hearing on a controverted claim" Subsection (B) states that "[e]ach party shall present all evidence at the initial hearing." Additional hearings requested for the purpose of introducing additional evidence "*will be granted only at the discretion of the hearing officer or commission.*" Ark. Code Ann. § 11-9-705(C)(i) (emphasis added); *Bryant v. Staffmark, Inc.*, 76 Ark. App. 64, 61 S.W.3d 856 (2001) (stating that the Commission has broad discretion with reference to the admission of evidence, and that decision will not be reversed absent an abuse of that discretion). In denying claimant's motion, the Commission found that he did not act diligently in submitting the medical reports from Dr. Hart, as that information was clearly available to him prior to the hearing on compensability. Claimant did not submit those medical records until after the case had been decided by the ALJ and was on appeal to the Commission. Further, claimant did not attach the evidence he wished to submit to his request for a hearing on the introduction of that evidence, which is in violation of Arkansas Code Annotated section 11-9-705(C)(ii) (stating that a request for a hearing for the

introduction of additional evidence must show the substance of the evidence desired to be presented). Under these circumstances, there was no abuse of discretion by the Commission in denying his request to submit additional records.

As his final point, claimant asserts that estoppel and laches should have been invoked to prevent One Beacon from challenging compensability seven years after accepting the injury as compensable. Estoppel and laches, however, were not raised below. Accordingly, it may not be raised for the first time in this appeal. See *T & T Chem., Inc. v. Priest*, 351 Ark. 537, 95 S.W.3d 750 (2003); *Johnson v. Hux*, 28 Ark. App. 187, 772 S.W.2d 362 (1989).

Based on the foregoing, we affirm the Commission's decision.

Affirmed.

GLADWIN and HENRY, JJ., agree.